



**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>Reita N. Agarwal,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 3:07-1149</b>
	)	
<b>JAMES B. PEAKE, Secretary,</b>	)	<b>JUDGE ECHOLS</b>
<b>Department of Veterans Affairs,</b>	)	
	)	<b>Jury Demand</b>
<b>Defendant.</b>	)	
	)	

**RETALIATION GENERALLY**

Title VII protects employees and former employees who attempt to exercise the rights guaranteed by the Act against retaliation by employers.

Reita Agarwal claims that the Department of Veterans Affairs discriminated against her because she filed a charge of discrimination against the agency under Title VII of the Civil Rights Act of 1964.

42 U.S.C.A. § 2000E-3(A).



Your verdict must be for the Defendant Veterans Affairs if Reita Agarwal has not proved any of the above elements by a preponderance of the evidence or if the VA proves that it was not motivated by Dr. Agarwal's participation in protected activity.

*DeCorte v. Jordan*, 497 F.3d 433 (5<sup>th</sup> Cir. 2007).











witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them.

*Brenneman v. MedCentral Health System*, 366 F.3d 412, 418 (6<sup>th</sup> Cir. 2004); *Lauren v. Providence Hospital.*, 150 F.3d. 52, 56 (1<sup>st</sup> Cir.1999).



based on sympathy, speculation or guess work. On the other hand, the law does not require the plaintiff Reita N. Agarwal prove the amount of plaintiff's losses with mathematical precision, but only with as much definiteness and accuracy as circumstances permit.

42 USCA §1981a; *Wade v. Orange County Sheriff's Office*, 844 F.2d. 951, 955 (2<sup>nd</sup> Cir.1998); *Gunby v. Pennsylvannia Elec.Co.*, 840 F.2d 1108, 1121-22 (3<sup>rd</sup> Cir. 1988).



Your punitive damages award must bear a reasonable relationship to the Plaintiff's actual injury. In determining a reasonable relationship to the actual injury, you must consider all relevant factors, which include:

1. The impact or severity of Defendant Veterans Affairs' conduct.
2. The amount of time Defendant Veterans Affairs conducted itself in this manner.
3. The amount of compensatory damages awarded to the Plaintiff.
4. The potential profits Defendant may have made from Defendant's conduct.
5. The attitudes and actions of Defendant's top management after the misconduct was discovered.
6. The effect of the damages award on Defendant's financial condition.

42 U.S.C.A § 1981(b)(1); *Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999); *Lampley v. Onyx Acceptance Corp.*, 340 F.3d 478, 482 (7<sup>th</sup> Cir. 2003), *cert. denied*, 540 U.S. 1182 (2004).



If your answer to Question 3 is Yes, go on to question 4. If your answer is No, please sign this Verdict Form.

4. That Defendant's managerial official acted contrary to Defendant's good faith attempt to comply with the law by adopting policies and procedures designed to prohibit such discrimination in the workplace?

Yes\_\_\_\_ No\_\_\_\_

If your answer to Question 4 is No, what amount of punitive damages, if any, should be awarded against the Defendant? \$\_\_\_\_\_

SO SAY WE ALL.

Dated this \_\_ day of February, 2009.

\_\_\_\_\_  
Foreperson

#### **Authority**

Adapted from 3C O'Malley, Grenig & Lee, *Federal Jury Practice and Instructions* § 171.20 (2001 & Supp. 2003).

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 21, 2009, a copy of the foregoing was filed electronically with the Clerk's office by using the CM/ECF system and served electronically and/or via first-class U.S. mail, postage prepaid, upon the parties as indicated below. Parties may also access this filing through the Court's ECF system.

#### **Via Court's ECF Notice:**

Mercedes C. Maynor-Faulcon (*mercedes.maynor-faulcon@usdoj.gov*)  
Assistant United States Attorney  
110 9th Avenue South, Suite A-961  
Nashville, TN 37203-3870

Alan E. Foster (*alan.foster@va.gov*)  
Staff Attorney  
Office of the Regional Counsel  
U.S. Department of Veterans Affairs  
3322 West End Avenue, Suite 509  
Nashville, TN 37203

s/James B. Johnson  
James B. Johnson